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UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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Deutsche Telekom A.G.
v.
GTE Corporation

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Opposition No. 110,800
to application Serial No. 75/280,034
filed on April 23, 1997

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Richard W. Young and Jared D. Solovay of Gardner, Carton & Douglas for Deutsche Telekom A.G.

David M. Kelly and Christina M. Kelly of Finnegan, Henderson, Farabow, Garrett, & Dunner, for GTE Corporation.

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Before Seeherman, Quinn and Walters, Administrative Trademark Judges.

Opinion by Quinn, Administrative Trademark Judge:

An application has been filed by GTE Corporation to register the mark "GTE ACCESS" for "telephone calling card services" (in International Class 36) and "telephone communication services" (in International Class 38).[1]

[1] Application Serial No. 75/280,034, filed April 23, 1997, based on an allegation of a bona fide intention to use the mark in commerce.

Registration has been opposed by Deutsche Telekom A.G. under Section 2(d) of the Act on the ground that applicant's mark, when applied to applicant's services, so resembles opposer's previously used and registered mark "T-ACCESS" for a variety of telecommunications-related goods and services, including "electronic, electric and digital transmission of voice, data, information, images, signals and messages"[2] as to be likely to cause confusion. In its brief, opposer also highlighted the following goods and services identified in its registration: "electric, electronic, optical, measuring, signalling, controlling or teaching apparatus and instruments, all for use with telecommunications; printed matter, namely, books or magazines on telecommunications; financial services; real estate brokerage; real estate appraisal, real estate investment; real estate listing; real estate management; electronic mail services; audio and video teleconferencing; rental of apparatus for telecommunications; audio and video broadcasting featuring entertainment in the nature of visual and audio performances; education in the nature of

[2] Registration No. 2,219,929, issued January 26, 1999, based on a German registration under Section 44(e).

classes and seminars in the fields of business, telecommunications, and computers."

Applicant, in its answer, denied the salient allegations of the claim of likelihood of confusion.

The record consists of the pleadings; the file of the involved application; the testimonial affidavit of Sharon Cohen-Hagar, director of media relations for applicant, with related exhibits, submitted by applicant pursuant to a stipulation between the parties; a certified copy of opposer’s Registration No. 2,219,929, for the mark “T-ACCESS”; a dictionary definition of the word “telephone”; and applicant's responses to two interrogatories, all introduced by way of opposer’s notices of reliance. Additionally, the record includes certified copies of twenty of applicant's registrations of “GTE” marks for various telecommunications services and products; excerpts from printed publications retrieved from the NEXIS database; and twenty-six third-party registrations of marks containing the term “ACCESS,” all introduced by way of applicant’s notices of reliance. Both parties filed briefs,[3] and opposer filed a reply brief. An oral hearing was not requested.

[3] With its brief, applicant submitted copies of certain of opposer's responses to office actions filed during the prosecution of the underlying application that matured into

In view of opposer's ownership of a valid and subsisting registration for its pleaded mark, there is no issue with respect to opposer's priority. See *King Candy Co., Inc. v. Eunice King's Kitchen, Inc.,* 496 F.2d 1400, 182 USPQ 108 (CCPA 1974).

Our determination under Section 2(d) of the Act is based on an analysis of all of the facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue. *In re E. I. du Pont de Nemours & Co.,* 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the services. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976).

In the present case, applicant "does not dispute that the services and channels of trade for the services are similar." (applicant's brief, p. 16). Indeed, the

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opposer’s registration. Applicant did not properly introduce this evidence into the record at trial. It would appear that the evidence was submitted in connection with a motion for summary judgment. However, evidence submitted with regard to a summary judgment motion does not form part of the evidentiary record for trial unless it is properly introduced during trial. See TBMP § 528.05(a), and cases cited therein. Accordingly, exhibit 1 to applicant's brief has not been considered by the Board in reaching the decision herein.

parties' telecommunications services, at least in part, are identical, and are, in large part, otherwise related.

Opposer argues that applicant's mark "GTE ACCESS is strikingly similar in sound, appearance and connotation to T-ACCESS, resulting in confusingly similar overall commercial impressions." (opposer's brief, p. 3). Opposer contends that "[p]articularly when pronounced aloud, the two marks bear a striking resemblance: gee tee eee access and tee access." (Id. at 4). Opposer contends that the degree of similarity between the marks necessary to support a conclusion of likelihood of confusion declines when marks are used in conjunction with virtually identical services.

Applicant contends that the term "ACCESS" is highly suggestive as used in connection with telecommunications services and, accordingly, applicant's "well-known house mark" is the dominant portion of its mark and serves to sufficiently distinguish the marks.[4] Applicant supports

[4] Applicant has submitted twenty registrations of the "GTE" house mark. Ms. Cohen-Hagar stated that "GTE" has been associated with applicant since applicant was formed in 1958, and that applicant has for many years generated billions of dollars in revenues for goods and services under the "GTE" mark. Applicant's customers for telephone services have numbered in the tens of millions, and applicant is a leading provider of wireless and inflight telecommunications. In addition, as exhibits to Ms. Cohen-Hagar's testimony, applicant has submitted

its argument of suggestiveness with copies of twenty-six third-party registrations of marks including the term “ACCESS” covering various telecommunications services and products.

Given the lack of dispute with regard to the similarity between the parties' services, and the Board’s finding that some of the services are identical, the issue of likelihood of confusion clearly turns on a comparison of the involved marks.

In considering the marks in their entireties, we recognize, of course, that both marks include the word

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copies of its annual reports from 1963-1999, evidence of advertising expenditures in excess of $280 million annually, and numerous articles "evidencing the length of use, recognition, and fame of the GTE mark."

"ACCESS." However, the fact that both marks have this common element is not a sufficient basis on which to find likelihood of confusion. The word "ACCESS," as used in connection with the identified services, has a suggestive meaning. In this regard, we take judicial notice[5] that "access" is defined as follows: "to make contact with or gain access to; be able to reach, approach, enter, etc." The Random House Dictionary of the English Language (2d ed. unabridged 1987).

Moreover, the record shows that others in the telecommunications field have registered trademarks containing the term "ACCESS." In fact, eleven of the third-party registrations submitted by applicant include disclaimers of the term "ACCESS."[6] Third-party registrations are probative to the extent that they show the meaning of a mark in the same way that dictionaries are used. See *Tektronix, Inc. v. Daktronics, Inc.*, 534 F.2d 915, 189 USPQ 693, 694 (CCPA 1976); and *Red Carpet Corp. v. Johnstown American Enterprises, Inc.*, 7 USPQ2d

[5] The Board may take judicial notice of dictionary definitions. *University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co., Inc.,* 213 USPQ 594 (TTAB 1982), aff'd, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

[6] Registration Nos. 2,420,910; 2,444,213; 2,148,388; 1,873,405; 2,327,971; 2,352,125; 1,922,458; 2,207,227; 2,158,525; 2,294,125; and 2,099,113.

1404 (TTAB 1988). In the *Tektronix, Inc. v. Daktronics, Inc.* case, the

court stated: "Because marks, including any suggestive portions thereof, must be construed in their entireties, the mere presence of a common highly suggestive portion is usually insufficient to support a finding of likelihood of confusion." See also *Plus Products v. Redken Laboratories, Inc.*, 199 USPQ 111 (TTAB 1978); *American Hospital Supply Corporation v. Air Products and Chemicals, Inc.*, 194 USPQ 340 (TTAB 1977); and *Cutter Laboratories, Inc. v. Air Products and Chemicals, Inc.*, 189 USPQ 108 (TTAB 1975).

Furthermore, there are specific differences between the
marks "T-ACCESS" and "GTE ACCESS" in their entireties, the most prominent of which are the differences between "T" and "GTE." "T" and "GTE," which form the beginning portion of the respective marks and are noticeable parts of each mark being set apart from the word "ACCESS," are quite different in appearance and pronunciation, despite opposer's contentions to the contrary. Moreover, "GTE" is applicant's house mark and it is clear that consumers would recognize it as such given that "GTE" has been the subject of extensive exposure in the marketplace.

Accordingly, when the marks are compared in their entireties, they are sufficiently different in

appearance, pronunciation, meaning and commercial impression that confusion is not likely, even when the marks are used in connection with identical or closely related services.

Decision: The opposition is dismissed.